

## **§ 502.16**

job offer, as prescribed in 20 CFR 655.104.

### **§ 502.16 Sanctions and remedies—General.**

Whenever the Secretary believes that the H-2A provisions of the INA or these regulations have been violated such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(a) Institute appropriate administrative proceedings, including: The recovery of unpaid wages, including wages owed to U.S. workers as a result of a layoff or displacement prohibited by these rules (either directly from the employer, a successor in interest, or in the case of an H-2ALC also by claim against any surety who issued a bond to the H-2ALC); the enforcement of covered provisions of the work contract as set forth in 29 CFR 501.10(a); the assessment of a civil money penalty; reinstatement; or the recommendation of debarment for up to 3 years.

(b) Petition any appropriate District Court of the U.S. for temporary or permanent injunctive relief, including the withholding of unpaid wages and/or reinstatement, to restrain violation of the H-2A provisions of the INA, 20 CFR part 655, subpart B, or these regulations by any person.

(c) Petition any appropriate District Court of the U.S. for specific performance of covered contractual obligations.

### **§ 502.17 Concurrent actions.**

The taking of any one of the actions referred to above shall not be a bar to the concurrent taking of any other action authorized by the H-2A provisions of the Act and these regulations, or the regulations of 20 CFR part 655.

### **§ 502.18 Representation of the Secretary.**

(a) Except as provided in 28 U.S.C. 518(a) relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under the Act.

(b) The Solicitor of Labor, through authorized representatives, shall rep-

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resent the Administrator, WHD and the Secretary in all administrative hearings under the H-2A provisions of the Act and these regulations.

### **§ 502.19 Civil money penalty assessment.**

(a) A civil money penalty may be assessed by the Administrator, WHD for each violation of the work contract as set forth in § 501.10(a) of these regulations.

(b) In determining the amount of penalty to be assessed for any violation of the work contract as provided in the H-2A provisions of the Act or these regulations the Administrator, WHD shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation or violations of the H-2A provisions of the Act and these regulations;

(2) The number of H-2A employees, corresponding U.S. employees or those U.S. workers individually rejected for employment affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made in good faith to comply with the H-2A provisions of the Act and these regulations;

(5) Explanation of person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public health, interest or safety, and whether the person has previously violated the H-2A provisions of the Act;

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury to the workers.

(c) A civil money penalty for violation of the work contract will not exceed \$1,000 for each violation committed (with each failure to pay a worker properly or to honor the terms or conditions of a worker's employment that is required by sec. 218 of the INA, 20 CFR 655, subpart B, or these regulations constituting a separate violation), with the following exceptions:

(1) For a willful failure to meet a covered condition of the work contract,